



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 13th day of February, 1996

SERVED February 13, 1996

U.S.-PHILIPPINES ALL-CARGO SERVICE PROCEEDING

Docket OST 96-1074

Application of

NORTHWEST AIRLINES, INC.

Docket OST 95-857

for designation under the U.S.-Philippine Air Transport Services
Agreement to engage in all-cargo services

Applications of

EVERGREEN INTERNATIONAL AIRLINES, INC.

Dockets OST 95-864

POLAR AIR CARGO, INC.

OST 95-865

UNITED PARCEL SERVICE CO.

OST 95-863

WORLD AIRWAYS, INC.

OST 95-867

for exemptions under 49 U.S.C. section 40109 to engage in
scheduled all-cargo service (U.S.-Philippines)

Application of

UNITED PARCEL SERVICE CO.

Docket OST 95-862

for certificate of public convenience and necessity
under 49 U.S.C. section 41102 engage in scheduled all-cargo
service (U.S.-Philippines)

ORDER INSTITUTING PROCEEDING

SUMMARY

By this order we institute the **U.S.-Philippines All-Cargo Service Proceeding**, to select two carriers to provide scheduled all-cargo services in the U.S.-Philippines market. We consolidate into this proceeding the captioned applications of Northwest, Evergreen, Polar, United Parcel Service, and World for exemption authority.

BACKGROUND

Under a 1989 Memorandum of Understanding between the United States and the Philippines, only one U.S. carrier could be authorized to provide scheduled all-cargo service between the United States and the Philippines on Route 3 of the U.S.-Philippine Air Transport Services Agreement.¹ Federal Express Corporation is the one carrier currently designated on Route 3 and it is currently providing service. Under a Protocol to the U.S.-Philippine Air Transport Services Agreement signed November 20, 1995, the United States may now designate a total of three carriers to provide scheduled all-cargo services on Route 3. Therefore, we have the opportunity to designate two additional U.S. carriers on Route 3 for U.S.-Philippines scheduled all-cargo service.²

By notice dated November 1, 1995, the Department notified all certificated U.S. air carriers of the new all-cargo opportunities in the U.S.-Philippines market and invited interested carriers to file exemption applications. Evergreen International Airlines, Polar Air Cargo, United Parcel Service and World Airways submitted exemption applications to use the above rights.³ Northwest Airlines submitted a request to be designated for service on Route 3 since it currently holds certificate authority to provide all-cargo service in the U.S.-Philippines market.⁴

APPLICATIONS/RESPONSIVE PLEADINGS

The five U.S. carriers seeking the two available designations propose to operate scheduled all-cargo service between various U.S. gateway points and Manila via intermediate points and beyond points. Evergreen proposes twice weekly service between New York and Honolulu, on the one hand, and Manila, on the other, via Sydney and Melbourne and beyond Manila to Hong Kong. Northwest seeks designation to offer once weekly service between Anchorage and Manila via Tokyo and also, an eastbound only service between Singapore and Anchorage via Manila and Tokyo. Polar proposes three weekly westbound-only services between New York, Chicago and Anchorage, on the one hand, and Manila, on the other hand, via Khabarovsk, Russia, and beyond Manila to Taipei and also, two weekly eastbound-only flights over the same routing except that they would serve Singapore instead of Taipei. Polar is also seeking authority to integrate the above authority with its existing certificate and exemption authority.⁵ UPS proposes to operate between Anchorage and Manila via Seoul, and Taipei, and beyond Manila to Singapore and Kuala Lumpur. World proposes to operate three weekly flights between New York, Los Angeles and San Francisco, on the one hand, and Manila, on the other hand, via Seoul and beyond Manila to Kuala

¹ Route 3 reads "from the United States via intermediate points to the Philippines and beyond".

² The Protocol also includes other provisions that enable U.S. carriers to provide scheduled all-cargo services. Specifically, it provides for regional all-cargo service on Route 1b. It also permits the combination carriers to switch their Route 2 combination service flights to all-cargo services. These services are not at issue here.

³ UPS also filed a corresponding certificate application. Our notice specifically solicited exemption applications only. Therefore, we will dismiss UPS' certificate application without prejudice to refiling.

⁴ See Orders 90-6-44 and 92-3-38.

⁵ Polar holds certificate authority to serve Australia, Hong Kong, South Korea, Taiwan, the United Kingdom, Belgium, India, Indonesia, Germany, Malaysia, the Netherlands, New Zealand, Singapore, and the United Arab Emirates. See Order 95-1-41. It also holds exemption authority to serve Buenos Aires, Argentina, Santiago, Chile, and Barranquilla, Colombia. See Order 95-3-30.

Lumpur. All of these carriers currently provide scheduled all-cargo service in the Pacific area, and thus they state that they could begin Philippines service in conjunction with the above services immediately or within 60 days.

Evergreen, Northwest, Polar, UPS and World filed consolidated answers to the applications of the other carriers and they also filed consolidated replies to the answers.⁶ All of the carrier answers, except Northwest's, deal with the merits of the various applications with each carrier asserting the superiority of its proposal over that of the other applicants.

Northwest's answer deals with procedural questions. Northwest states that the Department should establish a competitive proceeding to select among the mutually exclusive applications. It further argues that a decision on Continental Micronesia's pending application to reallocate three combination service frequencies under Route 2 should be postponed until the designations under Route 3 are awarded. In this regard, Northwest states that its cargo proposal can be accommodated under both routes, but that Route 3 allows more operating flexibility.⁷

Continental Micronesia filed a reply to Northwest's answer. Continental Micronesia objects to Northwest's proposal to delay reallocation of the three unused frequencies on Route 2. Continental Micronesia argues that the Department should award the three unused frequencies on Route 2 to Continental Micronesia immediately to prevent further waste of valuable bilateral rights. It asserts that even if Northwest is not awarded authority under Route 3, new rights become available under Route 2 on September 30, 1996, that would satisfy Northwest's all-cargo proposal.

Northwest states that it is fully using its available Philippines authority to provide combination service and that additional all-cargo authority is necessary to meet freight demand.

DECISION

The Protocol to the Agreement makes available valuable new opportunities for U.S. carriers to provide scheduled all-cargo services between the United States and the Philippines. Therefore, we have decided to institute the **U.S.-Philippines All-Cargo Service Proceeding**, to select two carriers to provide scheduled all-cargo air services between the United States and the Philippines.⁸

As we have previously solicited applications for this authority, we will not provide a further opportunity for carriers to file applications for this authority. We will consolidate the exemption applications filed by Evergreen, Polar, United Parcel Service, and World and the designation application of Northwest into this proceeding.

Whether granting additional carriers authority to provide scheduled all-cargo service in the Philippines market is consistent with the public interest will not be an issue. The additional service

⁶ UPS' reply was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

⁷ Continental Micronesia has a pending request to reallocate three unused frequencies for combination service currently held by United Air Lines. Northwest is also designated under Route 2 and it has opposed Continental Micronesia's request stating that it might wish to use these frequencies to operate to operate all-cargo services. Northwest has stated that it will withdraw its objection to Continental Micronesia's application if it is designated under Route 3. See Docket OST 95-269(50387).

⁸ The issues raised by Northwest regarding Continental Micronesia's application in Docket OST 95-269 are more appropriately addressed in the context of that proceeding and do not affect an institution of a proceeding here regarding Route 3 operations.

opportunities represent valuable rights that were obtained through negotiations in exchange for operating rights for Philippine carriers. The public interest clearly calls for use of these rights.

We will award the authority at issue in this proceeding in the form of two-year exemptions. Consistent with our practice in competitive proceedings, we will subject the authority awarded to a startup condition, the duration which will be determined by the record of this proceeding.

In selecting carriers for this authority our primary objective will be to maximize the public benefits that will result from award of this authority. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the shipping public. We will also consider the effect of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Philippines market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant.

PROCEDURES AND TIMETABLE

It is our policy to tailor our procedures to the scope and complexity of the issues before us. We believe that written, non-oral, show-cause procedures under Rule 22a(d) of our regulations (14 CFR 302.22a(d)) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact, and no party has presented any, that would warrant an oral evidentiary hearing in this case.

In order to develop a comparative basis for selecting among the applicants in this proceeding, we will require submission of certain evidentiary information. In addition, the Department will make certain information available to the parties to facilitate preparation of their proposals.

A. APPLICANT EVIDENCE

Each applicant should submit the following information for the forecast period the twelve months ending June 30, 1997. Submissions should contain specific factual information so that further clarification is unnecessary. The sources and methodology used for all traffic estimates should be clearly explained.⁹ The five current applicants should also submit the required information to the extent that it is not already included in their applications on file.

1. Proposed schedules showing startup dates, complete routings from origin to destination of all flights, days scheduled, equipment types, and variation of frequencies/routings by traffic season, if applicable.
2. Based on the proposed schedules, a cargo traffic forecast (both revenue tons and revenue ton-miles), by direction, for the proposed U.S.-Philippines single-carrier services, indicating the data source of all traffic projections.¹⁰ Also, include specific estimates of behind-gateway traffic (both revenue tons and revenue ton-miles), by direction, that the applicant expects to flow over the proposed U.S. gateway and the source of such estimates. For behind-gateway traffic provide a breakdown of U.S.-Philippines (Third and Fourth Freedom) traffic (both revenue tons and revenue ton-

⁹ All data and responsive information must be given in U.S. dollars and pounds/tons. An applicant may choose, in addition, to present evidence using other units of measure; however, it must provide the data in the standard measure for comparative purposes.

¹⁰ Applicants should specify the payload capacity used based on the stage lengths and full routings involved in determining their estimates.

miles) and separate breakdowns for Third-Country-Philippines (Fifth and Sixth Freedom) traffic (both revenue tons and revenue ton-miles). Forecasts should also specify the capacity available on the proposed services for U.S.-Philippines and Third Country-Philippines traffic and the percentage of express/small package and general air freight expected to be carried. If mail is expected to be carried, this should also be shown separately.¹¹

3. A statement as to whether the aircraft to be used in the proposed schedules are (a) on hand or (b) on order. If on hand, indicate where, and the extent to which, those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate specific plans for achieving compliance.
4. For each U.S.-Asia/Pacific market that the applicant has authority (either certificate or exemption) to provide scheduled all-cargo service, provide the number of scheduled flights operated, by direction, by month, for the period January 1, 1995, through December 31, 1995.
5. A statement as to whether the applicant, if selected for the primary award, would accept a condition on the authority requiring service by a date specified by the Department, and if so, what startup period should be imposed.

B. DOT EVIDENCE

Pursuant to sections 241.19-6 and 399.100 of the Department's regulations, it is determined that the Department's T-100 data for cargo operations between the United States and the Philippines for the period January 1, 1992, through June 30, 1995 are material and relevant to a final determination of the issues in the case. We are releasing those data to the U.S. carrier applicants in this proceeding. Those parties to the proceeding will be free to use those data to the extent they deem necessary in this proceeding.

The Economic & Financial Analysis Division of the Office of Aviation Analysis will make available to the parties the following data, to the extent possible, in the form of information responses:

1. Schedule T-100 and T-100(f) nonstop segment data (scheduled and nonscheduled), including, *inter alia*, belly-cargo traffic, by carrier (U.S. and foreign) by month by direction, beginning January 1, 1992, through June 30, 1995, between the United States and the Philippines;
2. Schedule T-100 and T-100(f) on-flight market data (scheduled and nonscheduled), including, *inter alia*, belly-cargo traffic, by carrier (U.S. and foreign) by month by direction, beginning January 1, 1992, through June 30, 1995, between the United States and the Philippines.

PROCEDURAL SCHEDULE

In order to facilitate a prompt decision in the case we intend to conduct the proceeding here according to the following schedule:

DOT IRs:¹²

February 16, 1996

¹¹ The base year for traffic forecasting purposes should be the twelve months ended June 30, 1995. The forecast year is the twelve months ending June 30, 1997.

¹² Due to the volume of the Department's Information Responses, we will be unable to print and distribute copies to each party. One copy of these materials will be made available for the parties' use in

Direct Exhibits:	March 4, 1996
Rebuttal Exhibits:	March 18, 1996
Briefs:	April 1, 1996

All dates indicated are delivery dates. An original and four copies of all submissions are to be received at the Department's Docket Section no later than the dates indicated. ¹³ Parties are free to make service by facsimile or by hand .

ACCORDINGLY,

1. We institute the *U.S.-Philippines All-Cargo Service Proceeding*, which will be decided by non-oral hearing procedures under Rule 22a(d) of our regulations (14 CFR 302.22a(d));

2. The proceeding instituted in ordering paragraph 1 shall include consideration of the following issues:

a. which two carrier(s) should be authorized to provide scheduled all-cargo services between the United States and the Philippines as set forth in the Protocol to the U.S.-Philippine Agreement;

b. what intermediate and beyond authority, including route integration authority, should be awarded in conjunction with the Philippine authority awarded in this proceeding;

c. what terms, conditions and limitations, if any, should be placed on any authority awarded in this proceeding;

3. We consolidate the applications of Evergreen International Airlines, Inc., in Docket OST-95-864; Northwest Airlines, Inc., in Docket OST-95-857; Polar Air Cargo, Inc., in Docket OST-95-865; United Parcel Service Co., in Docket OST-95-863; and World Airways, Inc., in Docket OST-95-867 into the *U.S.-Philippine All-Cargo Service Proceeding*;

Room 4201, 400 Seventh Street, S.W., Washington, D.C. In addition, the Department will issue on request copies of its information responses on computer diskettes. Parties who wish to receive such diskette should contact the Economic & Financial Analysis Division at 202-366-2344. Use of the data in the Department's Information Responses (either hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) to this proceeding.

¹³ The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Economic and Financial Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street, S.W., Washington, D.C. 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel ® (version 5.x or earlier), Lotus 1-2-3 ® (version 3.x or earlier), Microsoft Word ® (version 6.x or earlier), or WordPerfect ® (version 5.2 or earlier) should be filed in their native formats. Parties may also file exhibits or briefs via e-mail to our Internet address: dot_dockets@postmaster.dot.gov. Files sent via e-mail should be ASCII (text only) format. Parties using other software may either (1) file IRs, exhibits and briefs in the foregoing formats, or (2) contact Mr. Michael A. Lane at 202-366-2352 or Mr. Stephen H. Davis at 202-3661049 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.

4. Petitions for reconsideration of this order shall be due no later than four calendar days from the date of service of this order; answers to any petitions shall be due no later than three calendar days thereafter;
5. We grant the motion of United Parcel Service Co. to file an otherwise unauthorized document;
6. We dismiss without prejudice the application of United Parcel Service Co. in Docket OST-95-862; and
7. We will serve this order on Continental Micronesia, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation.; Polar Air Cargo, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; United Parcel Service Co.; and World Airways, Inc.; the Ambassador of the Philippines in Washington, D.C.; and the Department of State (Office of Aviation Negotiations).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov./dotinfo/general/orders/aviation.html>.*